



# Submission from the Children's Institute, University of Cape Town on residential care in the Children's Amendment Bill [B19B of 2006]

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## Introduction

From July 2006 to June 2007 the Children's Institute carried out exploratory research to examine the provisioning and practice of residential care for children in South Africa. This research revealed that the residential care sector is complex and varied with residential care settings differing dramatically from each other along various dimensions, including models of care, staffing practices, programme provisioning and settings' relationships with their local community. Until now, there has been little more than an anecdotal picture of the residential care sector, and in particular very little has been known about less formal residential care settings, or those settings that do not conform neatly in their origins, form or functions to conventional large institutions and which tend not to be registered with the State.

The Children's Amendment Bill [B19B of 2006] provides for Child and Youth Care Centres (CYCC) in Chapter 13. This chapter does not take into account the diversity of residential care provisioning, and assumes that all residential care set-ups are clearly distinct from family- and community-based care. The focus is on conventional institutional forms of residential care, leaving more informal, less institutional set-ups inadequately catered for by the Bill.

The arguments and case studies in the submission are drawn from the study report *Home truths: The phenomenon of residential care for children in a time of AIDS* (Meintjes, Moses, Berry & Mampane, 2007). The submission has three sections. The first two sections describe our concerns using case study illustrations and offers general recommendations. The third section outlines specific recommendations for amendments to the Bill.

## 1. 'Extended Households'

The study documented a number of set-ups whereby members of a community were caring full-time for more than six children to whom they were not related. In this submission these are referred to as 'extended households' – distinct from extended families populated more exclusively by kin. Some of these set-ups were essentially large households or large families in which children were growing up over years in unrelated groups larger than an average sibling group, with carers who are consistent loving parental figures who treat them as their own and who provide them with long-term stability including beyond the age of 18 years old, and where children live just like others in their neighbourhood. The definition of a Child and Youth Care Centre in the Amendment Bill (s. 191(1)) implies that such a set-up would be seen as a Child and Youth Care Centre and therefore should be registered or closed down (s. 199(1a)).

However, some of these 'extended households' are in practice no different to a large household of kin. The value of the care arrangement lies in the fact that children are given an opportunity for consistent and loving care from parental figures offering them long-term stability. Registration as a CYCC would fundamentally shift the type of care being provided to professionalized, short-term and therapeutic care. This type of intervention is not necessarily appropriate to the children's care needs (where they require long-term care

outside of their biological families) and would necessarily remove children from these parental figures in the medium term. This would not be in the best interests of the children. Similarly closing this type of set-up down or requiring it to transform into a non-residential service would also not necessarily be in the best interests of the children who have been living together as family.

Consider the following case study from the research<sup>1</sup> (Meintjes, Moses, Berry and Mampane, 2007: p29):

### Case Study 1. The Nyathis

Vuyelwa and Mandla Nyathi live in a formally built area of an urban township in the Western Cape, adjoining a sprawling shack settlement. Theirs is the only double-storey home in their street, a brightly painted brick house located on a small stand. In all other ways, the home is indistinguishable from those surrounding it.

Ten years ago, Vuyelwa overheard a call from welfare services broadcast over the radio *"announcing that there are so many children that are left in the streets to die. And I was so surprised, I didn't know. So I listened and listened ... and then they appealed to the people to give, if someone can open his or her house to take children in"*. She describes how she approached her local Welfare office in response to the appeal, and almost immediately a six-month-old baby girl was placed with her and her husband. Two months later, a social worker visited her to check on the baby, and she was *"so impressed, and we loved her – she was adorable! So they were so impressed they asked me if they can bring a second one, a boy, so we took in a second ... and so it went on and on..."*.

Today they live with their four biological children and 19 others aged between one-and-a-half and 21 years. Six of the children have been placed in their foster care, though they receive foster care grants for only four of them, apparently because of administrative glitches in the Welfare office. The remainder of the children have no formal placement, though many of them have been brought into their care by social workers. Most of the children have lived with them for years, with over half arriving as infants.

In addition to the four foster care grants, the household survives on Mandla's salary from a local company. They have also participated for the past few years in a monthly support group for people like themselves caring for children that is run by a local NGO. As an affiliate of this NGO, they receive a monthly food parcel – *"some food, packets of rice, soup and all that, so it helps a lot... It took a bit of a load, a bit of a load [off us when] it started giving us some food and then started giving us – bought us a washing machine and dryer and then life was a bit easier again because I had to do all the washing myself, all the nappies and all that you know"*.

Despite the financial and other assistance and Mandla's salary, he points out that *"The financial matters, putting bread on the table on a daily basis is one of the big challenges"*. They worry too about paying for the children's education. "School fees!" whistles Vuyelwa, *"It's a big challenge because if you're looking at the number of kids that we have now, 15 years down the line its going to be a crisis when it comes to education, to educate all of them"*. In the meanwhile, they beam with pride about how well the children are doing at school, and the improvements they have seen in them.

Vuyelwa, who is not employed, is the principle caregiver to all the children. When she attends her theology course sessions a few times a week, Mandla's sister-in-law comes over to the house to look after the children. And a neighbour helps out sometimes, taking children to the clinic if necessary and such like. Nobody receives payment.

Says Mandla, *"Caring for the children is driven by care of the community... You cannot bear to see your neighbour going without food, or dying"*. Vuyelwa is quick to point out with respect to their extended household that *"really there's no difference, it's only that they're not our biological children. Otherwise we try by all means to make them happy and they are happy. We are a very happy family, we love them so much and they love us so much, yeah"*.

Mandla asserts similarly: *"I'm running a very basic, ordinary home but a very big family. Not an institution. No I don't think I have any intentions of institutionalising the place though institutionalisation would come with some [financial] benefits"*

<sup>1</sup> Pseudonyms are used in case studies in this submission to protect confidentiality.

We turn now to describe in more detail our concerns and recommendations around this issue.

- a. This case study highlights the important role that some 'extended households' are performing in providing care to children, and their need for support. In caring for children outside of their biological families, these settings are performing a State function and so should be able to obtain such support from the State. However, not all such settings are providing children with a loving and safe home, and for this reason regulation is critical in order to protect children from harm. It is important however that this support and regulation does not turn the set-ups into child and youth care centres, but allows them to continue to operate as 'families'. They face the same difficulties as other large households of kin and should ideally be supported and regulated by the same provisions that support and regulate households of kin - i.e. Chapter 8: Prevention and Early Intervention. It is therefore essential that this chapter be strengthened.

The NCOP amendments to the Bill to ensure that the duty to provide social services is clearly placed on the MECs are an important step forward. However, there remains an important gap in the provisions: The words "may provide" instead of "must provide" are used (s.146). In contrast the words "must provide" are used for protection services (s.105) and child and youth care centres (s.193). The word "may" gives MECs discretion with regards to whether prevention and early intervention services are provided and funded, with the danger that these services may not be funded at all, or may be inadequately funded.

### **Recommendation**

In order to ensure that prevention and early intervention services are adequately provided and funded an obligation must be placed on the State to fund these services through changing "may provide" to "must provide" in s146 in line with the provision of protection services and child and youth care centres.

- b. In order to extend support to and monitoring of these 'extended households' it is necessary that the children's placement in them be recognized legally by the State and have funding and monitoring/support attached to it. Currently in the Amendment Bill there are two options for placing more than six children in the care of someone not related to them, outside of a child and youth care centre:
  - s185(1)b allows for more than six children to be "placed in foster care with a single person or two persons sharing a common household" where "the court considers this for any other reason to be in the best interest of all the children".
  - s185(2) allows for more than six children to be "placed in foster care in terms of a cluster foster care scheme as prescribed".

These provisions raise three key issues:

1. In terms of both of these options, care needs to be taken not to create perverse incentives, especially given currently poorly functioning social services. It is therefore important to ensure that adequate assessment of families and children take place.
2. Positive examples of "extended households" like that described in the case study above, raise questions about what in essence constitutes 'family care' or a "family environment" (s191(1)) and what constitutes a "facility" (s191(1)). The definition of a Child and Youth Care Centre (s191(1)) would benefit from being redefined to clarify that settings like that of the Nyathis in the case study are not deemed unregistered child and youth care centres.
3. In addition, in the absence of clearer definition of cluster foster care in the Bill there is a risk that these provisions enable the operation of settings which are essentially child and youth care centres. The study documented a number of organizations who were using foster care legislation to do exactly this, and were then able to operate outside of the regulations for residential care. Children were thus living outside of family environments, but were not protected by stricter provisioning for residential care.

### **Recommendations**

In light of these issues we therefore recommend revising sections 3(d), 3(g), 180(3), 185 and 191 as detailed in the specific recommendations in the table at the end of this submission, in order to ensure:

1. That households with more than six children placed in their foster care receive greater levels of monitoring and support by social work professionals.

2. That 'extended households' and foster care placements are included in the "family environments" that are understood to be distinct from child and youth care centres in the definition thereof. Training of social work professionals around this issue will be crucial in order to avoid the automatic closure of such settings on the grounds that they are operating as unregistered child and youth care centres. Changing the title of s185 will also help to raise awareness of these provisions.
3. That provisions for cluster foster care cannot be used to offer similar services to child and youth care centres. A revised definition should clarify cluster foster care schemes as networking and support services to foster parents. Children should always be placed in the foster care of a foster parent, who may or may not be a member of a foster care scheme. This would exclude foster parents from being salaried employees of an organization or organizations from using the foster care grant as a salary. This is important in order to ensure that this provision is not used to provide what are essentially child and youth care centres.

## 2. Chapter 13: Child and Youth Care Centres

Consider the following case study of an unregistered children's home in a rural area (Meintjes, Moses, Berry and Mampane, 2007: p22; 46; 74):

### Case Study 2. Ikusasa Lethu

When school principal Sibongile Kuzwayo found one of her learners living in the bushes at the school, she and her colleagues responded by allowing him to live in a disused classroom and providing food and other support. He had a long history of abusive and neglectful relationships with a range of caregivers, which the local welfare office had been unsuccessful in addressing. This boy was subsequently joined by another couple of boys...and gradually the home grew, providing a safe place for children who were living alone or in abusive set-ups, or whose caregivers were not able to provide for them...Today, up to 25 children aged between five and 21 years old, both boys and girls, live at the home.

Ikusasa lethu occupies a small cement-block building - a five-bedroom structure, built haphazardly as funds have allowed. It is located at the bottom corner of a large expanse of school ground, across the way from an ablution block adjoining a cooking and eating area. Cooking is done in a cooking hut (as is typical in the area) on an open fire, and a structure built with cement and stone tables with shade cloth covering provides an eating area for the home as well as for the school feeding scheme. The children living at the home maintain a flourishing vegetable garden and mealie patch in the rainy season, as well as a motley collection of animals – including pigs, chickens aplenty, ducks, and a few rabbits.

This part of the school property buzzes with activity seven days a week. Children living in impoverished families come for meals each day including over the weekends; others simply come to hang out and play – including on the playground built by visiting volunteers a year or so back.

Right from the start Sibongile has made efforts to involve a range of local structures and residents in the home, including the school governing body, neighbours to the school and the local traditional healers – the indunas... “*[The indunas] officials came to the school to investigate the matter and confirmed their approval. They also told the boy that when he grows up they will give him land, provided that he behaves himself*”. Importantly consultation with the school governing body, the indunas, community members and relatives continues as the home develops, and many decisions – including which children should be staying in the home – are still made collectively.

Children living at Ikusasa lethu hail only from the local district. Sibongile is clear that this approach has benefited the children, in particular by enabling possibilities for continuity with their community of origin and limiting disruptions in their lives with the move into the home. She worries in this respect about the implications of official registration with the Department of Social Development, and the requirement that they would have to accept children from across the province: “*if we were registered, then it would go totally out of our hands ... If [the children are] from another district, it won't be easy.*”

Despite this Sibongile is eager for... Ikusasa lethu children's home to operate legally, and to be able to apply for the financial support from government that is available to official Children's Homes. So she



and her colleagues at the local NGO...approached the Department of Social Development to investigate registration processes. This precipitated a visit from officials from the regional Social Development office to inspect the home and its facilities...

The officials' visit to Ikusasa lethu left Sibongile and her colleagues feeling that their genuine attempt to assist children in need was not valued, the circumstances of the children and the efforts made on their behalf misunderstood, and their motivation mistrusted:

*"They were very negative ... They gave the impression that we doing this because we just wanted to have children living there ... They kept reminding us of the law... What I noticed was that they did not believe that these children were living here because the need arose."*

Sibongile is disappointed that the visit was not more constructive: *"They should've asked us about our future plans or asked us if we have money and at least offered some form of help"*. She notes that:

*"... What surprises me is, how can you have a social worker if you don't have money to pay the social worker? How can we employ more carers if we don't have money to pay them? Instead of saying that [we have to rectify these problems on our own before we can be registered], given the fact that we now have the structure in place, we should work hand in hand with them and that they will help us fund the payment of more carers, or more beds..."*

Most critically however, there was concern over the appropriateness of some of the changes that need to be implemented in order for the home to be registered, in particular considering the context in which it operates:

*"As for electricity in such a deep rural place, no one around here has got electricity. Does it now mean that because of our restrictions we should not help the children? Does it mean that we are not even allowed to build the old traditional huts in order to give a child a shelter? Does it mean because the conditions are not of the same standard as in the urban areas that we should just leave the vulnerable children in the bush? I do not have things at home like people who are living in the city..."*

*It doesn't mean because you grew up in a rural area that you must suffer and that you are not entitled to a proper life. No, I don't mean that, but they should look at the standard of the place [neighbourhood] ... Each [children's] home is different. They should understand that if they had visited a home that impressed them because it had a TV, a play-room and toys, I could also turn around and ask them if the children there had chickens or pigs or rabbits or do they grow mealies? If I was [a government official] I would consider that people are not the same and even these homes cannot be the same. There are some good things and some bad things, but it is the children's home and they are happy there."*

The officials repeatedly articulated concerns about the home operating as a magnet for children in the area, with children for whom there were alternative options ending up there simply because "everyone would want to live here because the conditions are better". In light of these concerns, Sibongile is surprised at their requirements for changes that would increase the disparities between the standard of living at Ikusasa lethu and that of the surrounding neighbourhood – something which she actively tries to avoid.

We now turn to describe in more detail various concerns with and recommendations for Chapter 13.

- a. The study documents how the current requirements for registration of a Children's Home in the Child Care Act of 1983 are more facilitative of the establishment of conventional institutions, and may drive community-based residential services which wish to be registered towards becoming more institutional in their operation. The Children's Amendment Bill sets to extend these requirements for registration, by including requirements for staff skills and qualifications to be prescribed, staff to child ratios to be prescribed, for all facilities to offer therapeutic programmes as well as provisions for "quality assurance".

Current requirements in particular hinder the more spontaneous local responses from accessing registration and support as the requirements are generally costly to implement and achieve. The additional requirements set out in the Bill are likely to further disadvantage these set-ups from achieving registration as employing staff and offering specialized programmes are also costly.

### **Recommendation**

It is therefore necessary that the MEC be obligated to assist set-ups which are conditionally registered (s202) to progressively realize the required norms and standards. This is necessary in order for the Bill to be in line with the Developmental Social Welfare model which underpins all post-1994 social

development policy in South Africa and which sets out to resource and empower local level insights and responses to social circumstances, recognizing the value inherent in 'indigenous' responses.

- b. Case Study 2 above clearly demonstrates the value of a residential care setting being embedded in neighbourhood and community. Indeed one of the primary criticisms of residential care by the child welfare sector is that it isolates children from community, hampering their ability to adjust to life 'outside' the institutional setting. A range of factors were documented in the study to influence the extent to which a home and the children resident there are embedded in community. These included:
- The degree of unregulated mobility in and out of the home
  - Whether interaction with 'community' members happened on-site and for specific purposes (leading to being less embedded) or whether children participated in existing 'community' processes (leading to greater embeddedness).
  - Location
    - There was an increased risk of isolation for homes located in high walled suburbia, industrial areas or on the outskirts of towns
  - Catchment area
    - Those restricting admission to children from the immediate neighbourhood simplified the maintenance of ties with community, family and friends leading to less dislocation for children
    - Registered set-ups and those operating through foster care provisions could in practice not limit their catchment area as they relied on social workers for referrals
  - Same/similar standard of living as surrounding neighbourhood/'community' of origin

Many of these factors were difficult for homes to maintain once they were registered. This was in large part due to a mismatch which the study documented between the interpretation and application of registration requirements and particular local understandings of an acceptable care environment for children, local child rearing practice as well as the more general local context. For example, the study documents situations where rural facilities were refused registration on the ground that they did not have electricity in an area where there is limited electricity supply; where homes were required to have televisions and toys for children's development in areas where neither of these is commonplace in children's own homes. Concomitantly, locally appropriate activities, such as children's rearing of farm animals and growing vegetables were ignored.

### **Recommendation**

The Bill would be strengthened by putting to the fore the value of facilities being embedded in community and the concomitant need for registration assessments to consider contextual differences in child rearing practice and local resources. This would mitigate against misinterpretations of the kind documented by the study and ensure broader awareness across facilities of the value and importance of ties to community and neighbourhood.

Although the details would be outlined in the norms and standards, provisions to include them could be considered for inclusion in s194(2).

- c. The Bill requires CYCCs to offer "therapeutic programmes" (s.191(2)) but does not define what a "therapeutic programme" is. The study documented instances in which staff at registered Children's Homes understood programmes to only entail specialised, professional interventions with children, and in which a commitment to programming of this kind was occurring at the expense of developmentally-sound everyday caregiving. So for example, in one home babies were being left in their cots all day, removed only for feeding and nappy changing, but twice a week volunteers came to do OT exercise with them. There was a sense that the OT "programme" was addressing the children's developmental needs.

Further more, a number of registered homes were interpreting and offering 'programmes' in highly routinised schedules, yet studies document that scheduled activities - which prevent children from having opportunities to entertain themselves in ways that they choose and which keep children within the confines of facilities - risk delaying children's appropriate development (see for example Giese & Dawes, 1999).

### **Recommendations**



Given the above it is important that when it comes to developing norms and standards for “therapeutic programmes” (194(2)b) that attention is paid to a broad range of appropriate ways for addressing children’s developmental and therapeutic needs including in all instances developmentally sound everyday caregiving.

We further recommend that s191(2) be amended to ensure that therapeutic programmes are always part of overall developmentally sound everyday caregiving.

- d. The Bill positions residential care as a short-term therapeutic intervention which must work with children to move them back into family-based care. While it is ideal that no children are looked after long-term in group care, it is clear from the study data that many children are remaining long-term in residential care. Consider the data from the study presented in table 1 below.

**Table 1: Length of time children had been resident in children's home**

Length of time in home (y)	3- to 5-year-olds		6- to 12- year-olds		13- to 18-year-olds		18+ year-olds		Total	
	n	%	n	%	n	%	n	%	n	%
0 - 0.5	17	19	29	10	13	5	0	0	59	9
0.6 - 2.0	37	41	70	24	89	33	1	5	197	29
2.1 - 4.0	20	22	82	28	45	17	4	20	151	22
4.1 - 6.0	6	7	58	20	37	14	3	15	104	15
6.1 - 8.0	0	0	20	7	21	8	4	20	45	7
8.1 - 10.0	0	0	7	2	26	10	5	25	38	6
10.1 - 12.0	0	0	7	2	31	11	2	10	40	6
12+	0	0	1	0	2	1	1	5	4	1
Indeterminate	10	11	23	8	6	2	0	0	39	6
<b>Total</b>	<b>90</b>	<b>100</b>	<b>297</b>	<b>100</b>	<b>270</b>	<b>100</b>	<b>20</b>	<b>100</b>	<b>677</b>	<b>100</b>

Of 677 children over 3 years old across 28 homes, 57% had been resident for over 2 years, 35% for over four years and 7% for over 10 years. This is a result of failures of social services to deliver effective reunification services; as well as the absence of an effective foster care system which actively recruits and supports unrelated foster parents resulting in children requiring long-term care outside of their biological family and kin having no other care options; and in some cases because homes set out to provide long-term care.

Homes which are more successful at moving children back into care in a ‘family environment’<sup>2</sup> tended to have dedicated programmes to this effect led by social workers. Family reunification or foster care programmes are not listed as programmes which may be offered by a child and youth care centre in s191(2). This has potential implications for the funding of these programmes which require professional staff as it is not clear whether they would qualify for funding as a child and youth care centre programme. Given the important role that these programmes play in ensuring that homes are able to operate as short-term care, adequate funding will be critical.

<sup>2</sup> This includes foster care

**Recommendations**

Allowing homes in s199(1) to transform into non-residential prevention and early intervention services or into foster care programmes as alternatives to registration or closure in order to help ensure that the most appropriate service is provided; that additional long-term placements in 'family environments'<sup>3</sup> are created; and that ideologies which support long-term facility-based group care for children are challenged.

Provide clarity around how family reunification and foster care programmes run by child and youth care centres will be funded.

- e. We strongly support that the provisions in Chapter 13 allow for child and youth care centres to offer a range of programmes catering to children with different care needs, and that the programmes on offer have to be suited for the children in the facility. When it comes to developing norms and standards around these "residential care programmes" care will need to be taken to ensure flexibility that will allow programme design to be tailored to children's specific care needs. The study documented a number of contradictions in the way homes were setting up care environments. For example where homes were trying to provide a "home-like" setting and at the same time requiring children to partake in highly regulated "programmes". In particular generic "programmes" were not able to cater for differing individual needs.

**Recommendation**

In order to ensure that norms and standards are developed for the different kinds of residential care programmes referred to in s191(2), we recommend amending s194(2)a to refer to "residential care programmes" rather than "a residential care programme".

- f. We recognise the importance of centres having social service professionals on staff in sufficient ratios. At the same time we also recognise as is evidenced in the study that other appropriate persons can play valuable roles in assisting to care for children in child and youth care centres. At the moment the Bill requires that all staff have skills and qualifications as prescribed, which may not be appropriate for certain support staff.

Many managers of settings in the study were also the founders of the settings. As the Bill is currently worded in s209 the person operating the centre must appoint or designate a person as the manager of the centre after following an interview process as prescribed by legislation. This appears to preclude a founder or person operating the centre from being the manager. As many of the residential care settings in the study grew organically over time in response to local children's needs and in addition many of the centres catered for relatively small numbers of children this preclusion does not seem to be appropriate.

**Recommendation**

In order to ensure that centres have both social service professional on staff and are able in addition to employ other appropriate persons to assist in operating the centre specific changes to s209(1) and (2) are recommended.

The anomaly in terms of the founder of a centre being able to be the manager is brought to the attention of the drafters and committee. It is not clear as to whether this can be addressed by the regulations required by the Bill for the interview processes.

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<sup>3</sup> This includes foster care



### 3. Specific recommendations

Note: Words in bold are insertions. Words with strikethrough are deletions.

#### Definitions

Cluster Foster Care		
	<p>Provide absolute clarity as to the difference between cluster foster care schemes and child and youth care centres.</p> <p>We recommend and support that cluster foster care schemes be defined as originally conceptualized: as networking and supportive bodies for foster parents. This would exclude the use of foster care grants as salaries or foster parents being employees of the organization running the scheme.</p> <p>We recommend the following amendments to s3(d) and s3(g):</p>	<p>Organizations are currently using foster care legislation to provide residential care without having to operate within the regulations for residential care. Children are thus living outside of family environments, but are not protected by stricter provisioning for residential care. Without a clearer definition of a cluster foster care scheme which explicitly excludes this practice, provisions for cluster foster care will allow this practice to continue. This is problematic not only because of the lesser protection afforded to children but also in terms of labour practices, as caregivers are both children's foster parents (who need to reside with have responsibility for children 24 hours a day) and staff employed to care for the children.</p> <p>On the other hand organizations currently providing support (emotional, material, training) to foster families are playing a crucial role in strengthening the foster care system and ensuring that foster care placements do not fail. One such organization in our study reported that none of their placements had failed.</p> <p>Amendments to the provisions for cluster foster care along these lines which ensure that children are placed in the care of foster parents directly and not into the care of organizations and which limit the definition of a foster parent to exclude salaried employees of organizations operating cluster foster care schemes are critical in order to prevent cluster foster care schemes from operating as child and youth care centres and therefore allow the Bill to accommodate 'extended households'.</p>
s3(d)	<p>By insertion after the definition of "clerk of court" of the following definitions:</p> <p>" 'cluster foster care scheme' means a <del>scheme providing for the reception of children in foster care in accordance with a foster care programme support</del> <b>network for foster parents</b> operated by-</p> <ul style="list-style-type: none"> <li>a) a social, religious or other non-governmental organization; or</li> <li>b) a group of individuals, <del>acting as care-givers of the children, and</del> <b>foster parents</b> managed by a</li> </ul>	

	provincial department of social development or a designated child protection organisation	
s3(g)	By the insertion after the definition of “family member” of the following definitions: “ ‘foster care’ means care of a child as described in section 180(1) and includes foster care in a cluster foster care scheme; “ ‘foster parent’ means a person who has foster care of a child by order of the children’s court, <del>and includes an active member of an organization operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child.</del>	

## Chapter 8: Prevention and Early intervention

Clause	Proposed amendment	Discussion/motivation
Purposes of prevention and early intervention programmes		
144 (1)	<p>In order to provide clarity around how family reunification and foster care programmes run by child and youth care centres will be funded, we recommend inserting additional clauses in 191(3) and 144(1) as outlined for Chapter 8 above.</p> <p>We recommend the following wording for the additional clause (j) in s144(1):</p>	<p>Children’s Homes which are more successful at moving children back into care in a ‘family environment’<sup>5</sup> tended to have dedicated programmes to this effect led by social workers. Family reunification or foster care programmes are not listed as programmes which may be offered by a child and youth care centre in s191(2). This has potential implications for the funding of these programmes which require professional staff as it is not clear whether they would qualify for funding as a child and youth care centre programme. Given the important role that these programmes play in ensuring that homes are able to operate as short-term care, adequate funding will be critical.</p>

	(j) assisting the reintegration of a child into a family environment <sup>4</sup> and providing after-care services for children who have been placed in alternative care	
Provisioning clause		
s146	The MEC <del>may</del> <b>must</b> , from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province.	Many households of both kin and non-kin are under pressure through poverty, unemployment, HIV/AIDS and various other social phenomena. In order to ensure that children are protected within a 'family environment' <sup>6</sup> and do not end up requiring moves into more restrictive statutory care environments a range of prevention and early intervention services are required. Clear provisioning clauses will oblige the MECs to provide and fund prevention and early intervention services and thus strengthen Chapter 8 and help ensure that adequate funding is allocated.

## Chapter 12: Foster Care

Clause	Proposed amendment	Discussion/motivation
Foster care		
s180(3)	A children's court may place a child in foster care-  a) with a person who is not a family member of the child; <b>or</b> b) with a family member who is not the parent of guardian of the child; <del>or</del> c) <del>in a cluster foster care scheme</del>	Amendments to the provisions for cluster foster care along these lines which ensure that children are placed in the care of foster parents directly and not into the care of organizations and which limit the definition of a foster parent to exclude salaried employees of organizations operating cluster foster care schemes are critical in order to prevent cluster foster care schemes from operating as child and youth care centres and therefore allow the Bill to accommodate 'extended households'.
Number of children to be placed in foster care per household		
s185	<del>Number of children to be placed in foster care per household</del> <b>Foster Care for more than six children</b>  (1) Not more than six children may be placed in foster care with a single person	We support s185 as it allows for more than six children to be placed in the care of a foster parent if a court considers it to be in the best interests of all the children, thus allowing 'extended households' which are providing good care to children to be supported and the children in their care to be protected.  In order to ensure that these placements are only made in the best interests of all the children adequate assessment, monitoring and support of the households by a social service professional will be necessary.

<sup>4</sup> This includes foster care

<sup>5</sup> This includes foster care

<sup>6</sup> This includes foster care

	<p>or two persons sharing a common household, except where:</p> <ul style="list-style-type: none"> <li>a) the children are siblings or blood relations; or</li> <li>b) the court considers this for any other reason to be in the best interests of all the children; <b>and</b></li> <li>c) <b>the foster parents do not have to recruit additional caregivers to assist in looking after the children.</b></li> </ul> <p>(2) <del>More than six children may be placed in foster care in terms of a cluster foster care scheme as prescribed. Where</del> <b>more than six children have been placed with a single person or two persons sharing a common households in terms of subsection 1 a social work professional must visit the household at least once every 6 months.</b></p>	<p>Furthermore in order to ensure that these 'extended households' are not able to begin functioning in ways which resemble a child and youth care centre it is important that the households do not employ caregivers to look after the children.</p>
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### Chapter 13: Child and Youth Care Centres

Clause	Proposed amendment	Discussion/motivation
<b>Definitions</b>		
s191(1) s191(2a) s191(2f)	<p>Provide clarity in the definition of child and youth care centres as to the meaning of "facility" and family environment" ensuring that set-ups operating as what this submission has termed 'extended households' are not deemed to be unregistered child and youth care centres, as well as ensure</p>	<p>'Extended households' are in practice no different to a large household of kin. The value of the care arrangement lies in the fact that children are given an opportunity for consistent and loving care from parental figures offering them long-term stability. Registration as a child and youth care centre would fundamentally shift the type of care being provided to professionalized, short-term and therapeutic care. This type of intervention is not necessarily appropriate to the children's care needs (where they require long-term care outside of their biological families) and would necessarily remove children from these parental figures in the medium term. This may not be in the best interests of the children. Similarly closing this type of set-up down or requiring it to transform into a non-residential service would also not necessarily</p>

<p>that “family environment” is not restricted to families populated by kin.</p> <p>We recommend the following amendments</p> <p>(1) A child and youth centre is a facility for the provision of residential care to more than six children outside <del>the child's</del> <b>a family environment</b> in accordance with a residential care programme or programmes suited for the children in the facility, but excludes-</p> <ul style="list-style-type: none"> <li>a) a partial care facility;</li> <li>b) a drop-in centre;</li> <li>c) a boarding school;</li> <li>d) a school hostel or other residential facility attached to a school</li> <li>e) a prison; or</li> <li>f) any other establishment with is maintained mainly for the tuition or training of children other than an establishment which is maintained for children ordered by a court to receive tuition or training</li> </ul> <p>(2) (a) the reception, care and development of children otherwise than in <del>their</del> <b>a family environment...</b></p> <p>(2) (f) the reception and temporary safe care of children for the purpose of-</p> <p>(i) observing and assessing those</p>	<p>be in the best interests of the children who have been living together as family.</p> <p>The use of “the child's family environment” and “their family environment” in s191 implies the family is the child's kin. Changing these phrases to “a family environment” makes the term more inclusive and sets child and youth care centres apart from settings like that described in case study 1 in the text above, which would more appropriately be regulated by provisions for foster care of more than six children.</p>
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	children; (ii) providing counseling and other treatment to them; or (iii) assisting them to reintegrate with their families <b>or alternative family placements</b> and the community	
191(2)	A child and youth care centre must offer <b>as part of a developmentally sound everyday care environment</b> a therapeutic programme designed for the residential care of children outside <del>the</del> a family environment, which may include a programme designed for-	<p>The study documented instances in which registered Children's Homes understood programmes to entail only specialised, professional interventions with children, and in which a commitment to programming of this kind was occurring at the expense of developmentally-sound everyday caregiving. Further more, a number of registered homes were interpreting and offering 'programmes' in highly routinised schedules, yet numerous studies document that scheduled activities - which prevent children from having opportunities to entertain themselves in ways that they choose and which keep children within the confines of facilities - risk delaying children's appropriate development (see for example Giese &amp; Dawes, 1999). It is therefore important that the Bill clarifies that "therapeutic programmes" should occur as part of developmentally sound everyday caregiving.</p> <p>It will also be necessary when it comes to developing norms and standards for "therapeutic programmes" that attention is paid to a broad range of appropriate ways for addressing children's developmental and therapeutic needs.</p>
191(3)	<p>In order to provide clarity around how family reunification and foster care programmes run by child and youth care centres will be funded, we recommend inserting additional clauses in 191(3) and 144(1) as outlined for Chapter 8 above.</p> <p>We recommend the following wording for the additional clause in s191(3):</p> <p>A child and youth care centre may in addition to its residential care programmes, offer-</p>	Homes which are more successful at moving children back into care in a 'family environment' <sup>7</sup> tended to have dedicated programmes to this effect led by social workers. Family reunification or foster care programmes are not listed as programmes which may be offered by a child and youth care centre in s191(2). This has potential implications for the funding of these programmes which require professional staff as it is not clear whether they would qualify for funding as a child and youth care centre programme. Given the important role that these programmes play in ensuring that homes are able to operate as short-term care, adequate funding will be critical.

<sup>7</sup> This includes foster care

	<p>a) the provision of appropriate care and development of children with disabilities or chronic illnesses</p> <p>b) therapeutic programmes</p> <p>c) the treatment of children for addiction to dependence-producing substances</p> <p>d) a programme for the treatment of children with a psychiatric condition;</p> <p>e) a programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18;</p> <p><b>f) a programme to assist children to reintegrate with their families or alternative family placement and the community; or</b></p> <p>g) any other service that may be prescribed by regulation.</p>	
Norms and standards		
s194(2)	<p>Include provisions for norms and standards around facilities being embedded in their surrounding neighbourhood and community.</p> <p>Possible wording could be:</p> <p><b>(n) access to and relationship with the local community.</b></p>	<p>One of the primary criticisms of residential care by the international child welfare sector is that it isolates children from community, hampering their ability to adjust to life 'outside' the institutional setting. Our study however documented Factors documented to influence the extent to which a home and the children resident there are embedded in community are currently difficult to maintain once a home is registered, largely because of a mismatch documented by the study between the interpretation and application of registration requirements and particular local understandings of an acceptable care environment for children, local child rearing practice as well as the more general local context.</p> <p>The Bill would be strengthened by putting to the fore the value of facilities being embedded in community and the concomitant need for registration assessments to consider contextual differences in child rearing practice and local resources. This would mitigate against misinterpretations of the kind documented by the study and ensure broader awareness across facilities of the value and importance of ties to community and neighbourhood.</p> <p>Although the details would be outlined in the norms and standards, provisions to include them could be considered for inclusion in s194(2).</p>
Notice of enforcement		

s199(1)	<p>Add an additional clause</p> <p>A provincial head of social development may by way of written notice of enforcement instruct –</p> <p>(a) a person or organisation operating an unregistered child and youth care centre –</p> <p>(i) to stop operating that centre; or</p> <p>(ii) to apply for registration in terms of section 199 within a period specified in the notice; or</p> <p>(iii) <b>to transform the centre into a non-residential primary prevention and early intervention programme or foster care programme</b></p>	<p>Allowing homes to transform into non-residential prevention and early intervention services or into foster care programmes as alternatives to registration or closure would help to ensure that the most appropriate service is provided, and that placements for children requiring long-term care outside of their kin networks but not requiring therapeutic residential interventions would be created.</p>
Conditional registration		
s202	<p><b>(1)</b>The registration or renewal of the registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine; including conditions –</p> <p>a) Specifying the type of residential care programme or programmes that may or must be provided in terms of the registration;</p> <p>b) Stating the period for registration will remain valid, <b>subject to the centre meeting the prescribed norms and standards contemplated in section 194 and such other requirements as may be prescribed for full registration and</b></p> <p>c) providing for any other matters</p>	<p>The 'must' in 202 (1) is necessary otherwise the conditional registration requirements may not be drawn up undermining the whole clause. These changes are necessary in order to help align the Bill with the Developmental Social Welfare model which underpins all post-1994 social development policy in South Africa and which sets out to resource and empower local level insights and responses to social circumstances, recognizing the value inherent in 'indigenous' responses. Without these changes the Bill will continue to hinder the more spontaneous local responses from accessing registration and support as the requirements are generally costly to implement and achieve.</p>

	that may be prescribed by regulation <b>(2) The MEC must assist persons or organisations operating a conditionally registered child and youth care centre to meet the prescribed norms and standards contemplated in section 194 and such other requirements as may be prescribed for full registration</b>	
Manager and staff of child and youth care centre		
209	<p>(1) The person or organization operating a child and youth care centre must appoint or designate-</p> <ul style="list-style-type: none"> <li>a) a person as the manager of the centre; and</li> <li>b) a sufficient number of <b>social service professionals</b> as staff; <b>and</b></li> <li>c) other appropriate persons to assist in operating the centre</li> </ul> <p>(2) A person may be appointed or designated in terms of subsection (1a) and (1b) only –</p> <ul style="list-style-type: none"> <li>a) after following an interview process prescribed by regulation</li> <li>b) if that person has the skills and training as prescribed; <del>and</del></li> <li>c) <del>if that is a fit and proper person to assist in operating a child and youth care centre</del></li> </ul> <p><b>(3) All persons appointed or</b></p>	<p>These changes are recommended in order to ensure that centres have both social service professional on staff and are able in addition to employ other appropriate persons to assist in operating the centre. We recognise the importance of centres having social service professionals on staff in sufficient ratios. At the same time we also recognise as is evidenced in the study that other appropriate persons can play valuable roles in assisting to care for children in child and youth care centres. At the moment the Bill requires that all staff have skills and qualifications as prescribed, which may not be appropriate for certain support staff.</p>

	<p><b>designated in terms of subsection (1) must be a fit and proper person to assist in the operating of a child and youth care centre</b></p> <p>NB: the above changes do not address the anomaly that a founder is precluded from being the manager because of the requirement for an interview process. It is not clear as to whether this can be addressed by the regulations pertaining to the interview process.</p>	
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## References

Giese, S., & Dawes, A. (1999). Child care, developmental delay and institutional practice. *SA Journal of Psychology*, 29(1), 17-22.

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